tion is whether in assessing on the basis of 1/10th of the improved value, the board had, in the particular circumstances of this case, the right to exercise that option.

"Annual value" is defined to mean —

"The estimated gross annual rent at which the holding might reasonably be expected to let from year to year:.... provided that in the case of any holding which is vacant or unoccupied or only partially built upon, the annual value shall at the option of the Board be deemed to be the annual value as hereinbefore defined or one-tenth of the improved value thereof."

It is not disputed that there is no building on the land. However, counsel for the respondent submitted that the land was neither vacant nor unoccupied. On the question of occupation, the learned counsel referred to the definition of "occupier" under section 2 of the Enactment and went on to cite the judgment of Ong J. (as he then was) in *Lee Wah Bank Ltd.* v. *The Commissioner of Federal Capital of Kuala Lumpur.*[1] That case can be distinguished from the present case in that, there, a building of nine storeys high and covering its entire area was in the course of construction and building contractors and their workmen were in continued possession since the work on the foundation began, whereas, in the present case, neither the agent who manages the estate nor the lease holder or any of his servants are in occupation of the said land. What amounts to "occupation" is I think, a question of fact depending on the facts of each case. In the instant case, it seems clear enough that though the agent of the appellant is looking after and managing the estate, it is essentially for purposes of ensuring that tapping is done properly and to arrange for the sale of rubber. On those facts, it seems evident that the land was not in actual fact occupied.

As regards the contention that the land was not vacant, the respondent's counsel pointed out that the land was under an agricultural title, planted with rubber and under tapping. He submitted that user of such land is a relevant factor in considering whether or not the land was vacant. He further submitted that the definition of "holding" is linked with the National Land Code and must therefore be read in consistency with it. The learned counsel's argument is in my view untenable. It is tantamount to saying that the provisions of the National Land Code must be imported to lend meaning to the word "holding" It is stated in plain language that in that Enactment the term "holding" means —

"any land, with or without buildings thereon, which is held under a separate document of title."

It seems evident that the expression "holding" is defined for purposes of the Enactment and is wholly unrelated to the provisions of any other law. The statute does not draw any distinction between agricultural, building or industrial or any other categories of land uses. The expressions "annual value" and "holding" are defined essentially in connection with provisions respecting the imposition of rates under Part IV of the Enactment for certain specified purposes and in relation to a definite area declared under the Enactment by a Ruler of a State. It is not a law operating over the whole country. It is declared independently of all questions of title or categories of land uses. To my mind, the fact as to user of any land within the area declared under the Enactment cannot be regarded as a relevant factor in determining this issue.

The important thing for this court to consider is the aim, scope and object of the Enactment. The interpretation of the Enactment that best accords with the policy appearing from its provisions and also to flow from its language must be given effect. "The language of the statute must not therefore be strained to make it apply to a case which it does not legitimately, on its terms, apply by invoking consideration of the supposed intention of the legislature." *Per* Lord Herschell in *Kent C.C.* v. *Gerald*[2] cited in *Maxwell* on Interpretation of Statutes 9th Ed. p. 22.

The expression "holding" read in the light of the definition of "annual value", seems to indicate that in the case of a holding with buildings on it, a fixed basis of assessment is laid down by the Enactment. The other remaining category of holding is that without buildings on it. It is in respect of this classification that the Enactment provides an exception, enabling the Board to exercise option where such holding is vacant, unoccupied or partially built upon. Apart from vacant holding, a holding without buildings on it would seem to include a holding, though there may be buildings on it, but which is —

(a) only partially built upon, and

(b) unoccupied.

In the instant case, the land in question has no buildings on it, and it is my considered opinion that it is a vacant holding within the meaning of the Enactment. Having found that the land was also unoccupied, the board has in my judgment, the right to exercise the option to assess either on the estimated gross annual rent at which the holding might reasonably be expected to let from year to year or on 1/10th of the improved value thereof.

*Order accordingly.*

Solicitors: *Skrine & Co.; Rithauddeen & Aziz.*

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## PRITAM SINGH v. PUBLIC PROSECUTOR

**[A.Cr.J. (Abdul Hamid J.) July 23, 1970]**

**[Kuala Lumpur — Criminal Appeal No. 8 of 1970]**

*Penal Code, s. 366 — Kidnapping — Abduction — Difference between — Charge of living on earnings of prostitution — Corroboration of complainant's evidence — Women and Girls' Protection Enactment (Cap. 156), s. 5(i).*

*Criminal Law and Procedure — Charge — Charge added by president of sessions court — Sanction required for charge — Sanction produced after adjournment — Criminal Procedure Code (Cap. 6), ss. 158 and 161.*

This was an appeal against the conviction of the appellant on charges of kidnapping a woman in order that the said woman may be forced into illegal intercourse, an offence under section 366 of the Penal Code and of knowingly living on the earnings of prostitution, an offence under section 5(i)

of the Women and Girls' Protection Enactment. The complainant in the case was above the age of 16 years at the material time. The second charge of knowingly living on the earnings of prostitution was added by the learned president at the end of the prosecution case. The charge required a sanction which was produced after an adjournment was obtained.

**Held,** allowing the appeal: (1) as the complainant in this case was above the age of 16 years at the material time the charge should have been for abduction and not for kidnapping;

(2) as kidnapping and abduction are two different offences and as on charge of abduction, the burden is on the prosecution to prove that the taking away was by compulsion, the conviction on the first charge could not stand;

(3) the learned president had properly exercised his power in adding the new charge under the Women and Girls' Protection Enactment and the sanction required in this case for the charge had been produced in compliance with section 161 of the Criminal Procedure Code;

(4) there was no corroboration of the complainant's evidence in this case and as the learned president had not directed his mind on the question of corroboration, the conviction on the second charge must be quashed.

*Cases referred to:-*

(1) *Haji Mohamed Paiman* v. *Public Prosecutor* [1966] 1 M.L.J. 58.

(2) *Public Prosecutor* v. *Mardai* [1950] M.L.J. 33.

MAGISTRATE'S CRIMINAL APPEAL.

*Inderjit Singh* for the appellant.

*Ajaib Singh* (Senior Federal Counsel) for the respondent.

**Abdul Hamid J.:** The appellant was convicted by the learned president, sessions court, Kuala Lumpur on the following charges —

(1) "That you on the 19.6.68 at 2.30 p.m. at Jalan Pudu in front of the Straits Times Press Building Pudu, in the District of Kuala Lumpur, in the State of Selangor, kidnapped a woman to wit Kumalesh Kumari in order that the said Kumalesh Kumari may be forced into illicit intercourse and that you have thereby committed an offence punishable under section 366 of the Penal Code."

(2) "That you between 20th and 24th July, 1968 at Kim Wah Hotel, Kuala Lumpur, in the State of Selangor did knowingly live on the earnings of the prostitution of one Kumalesh Kumari and that you have thereby committed an offence under section 5(i) of the Women and Girls' Protection Enactment (Cap. 156)."

The accused was sentenced to one year's imprisonment plus $600 fine in default six months' imprisonment on the first charge and to six months' imprisonment on the second charge, the sentences to run consecutively with effect from the date of arrest.

Briefly the facts were that on or about 18th June 1968, the complainant, a girl 17 years of age was on her way to the cinema when she was invited by the accused to get into a taxi and from there, she was driven to Penang. In Penang, the accused and the complainant stayed for a month at Odeon Hotel. There the accused forced her to have illicit intercourse with him. She also alleged that the accused forced her to earn money by having illicit intercourse with a number of male guests. On 20th July 1968, she returned to Kuala Lumpur and stayed at the Kim Wah Hotel. Accused again forced her to earn money by prostitution. Later they went to Malacca and stayed at one hotel and subsequently stayed at a massage parlour. On 9th and 10th August, 1968, the accused brought the complainant home.

There were two main grounds of appeal —

(1) There was miscarriage of justice in that the prosecution on the second charge was instituted without any sanction in contravention of explicit statutory provisions;

(2) The learned trial president erred in law in failing to direct his mind to the dangers of convicting on the uncorroborated evidence of PW 2 Kumalesh Kumari (the complainant).

Before proceeding any further, I shall first of all deal with the first charge. It is clear that the charge was wrongly framed. As the complainant was at the material time over the age of 16, the charge could not in my mind, have been one of kidnapping. The proper charge should have been for abduction. There was therefore an error in the charge concerning the statement of the offence. Section 156 of the Criminal Procedure Code provides that any error in stating the offence should not be regarded as material unless the accused was in fact misled by such error. Kidnapping and abduction are two different offences. On a charge of kidnapping, it was not part of the prosecution case to prove that the accused took away the complainant by force. On the other hand, where the charge is for abduction, the burden is on the prosecution to prove that the taking away was by compulsion.

In his grounds of judgment the learned president did appreciate that the defence was attempting to establish that the complainant left with the accused of her own free-will, nevertheless he completely lost sight of the fact that the charge was wrongly framed. Had the learned president been aware of this, it is probable that he might not have approached the case in the manner that he did. Since the charge was one of kidnapping, it can be assumed that the learned president only took into consideration the element necessary to constitute the offence charged. It is also difficult to say whether he would have come to the conclusion that he did if the correct charge had been before the court. While it is possible to say that the accused was not misled by the error, it cannot probably be said that such error had not in the particular circumstances of the case prejudiced the defence and occasioned a failure of justice. For this reason, I feel that the conviction on the first charge cannot stand.

As regards the second charge, this was added by the learned president at the close of the prosecution case. Under section 10 of the Married Women and Girls' Protection Enactment (Cap. 156), a sanction was required before a charge could be instituted. The appellant's counsel is contending that since the charge was one the prosecution of which previous sanction was necessary, the absence of such sanction at the commencement of the trial was fatal and that the proceedings in respect of that charge was therefore a nullity. The learned counsel placed reliance on the judgment of Azmi J. (as he then was) in *Haji Mohamed Paiman* v. *Public Prosecutor*[1] where it was held that —

"The written sanction should have been produced when the appellant was charged in court and as this was not done the proceedings were a nullity and the conviction must be set aside."

That case deals with a different situation, and, to my mind, has no application to the present case. Here, the learned president amended the charge at the close of the prosecution case after exercising his powers under section 158 of the Criminal Procedure Code. Since the charge was one for the prosecution of which previous sanction was necessary, the prosecuting officer applied for an adjournment for sanction to be produced. Sanction was produced at the resumed hearing. Mr. Ajaib Singh, senior federal counsel appearing for the respondent, argued that by reason of section 161 of the Criminal Procedure Code, the production of a sanction was in compliance with that section. Section 161 reads —

"If the offence stated in the new or altered or added charge is one for the prosecution of which previous sanction is necessary the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the new or altered charge is founded."

In my opinion, the learned president quite properly exercised his power under section 158 of the Criminal Procedure Code when he added a new charge. The added charge became one which the learned president was competent to hear on production of the sanction.

The remaining ground which the court has to determine is the question of corroboration.

"... there is no rule of law in this country that in sexual offences, the evidence of the complainant must be corroborated; nevertheless, as a matter of common sense, it will be unsafe to convict unless either the evidence of the complainant is unusually convincing or there is some corroboration of the complainant's story." See *Public Prosecutor* v. *Mardai*.(2)

Strictly, the present case is not a sexual offence as such. Nevertheless it is an established practice that the court will look for some corroboration particularly when the complainant is a young girl. Corroboration may not be necessary where the court is satisfied beyond any reasonable doubt that the complainant is telling the truth or where the nature of her evidence is such that the court is satisfied it is safe to convict.

In the instant case, the evidence of the caretaker of Kim Wah Hotel (P.W. 4), denied that the complainant stayed at his hotel. Though there was some evidence to show that the complainant visited the hotel on two occasions, there was nevertheless no evidence adduced by the prosecution, apart from the complainant's, to establish when these two visits were actually made.

This court has also directed its mind to the police report made by the complainant. The statement in her report does not however substantiate the evidence given by her in the court below. If her oral testimony had been substantiated such report may by reason of section 157 of the Evidence Ordinance be held to be sufficient corroboration. In this case the report was lodged three days after she returned from Malacca. There was no mention of Kim Wah Hotel. She referred in her report to a hotel near Federal. It is not known whether the hotel referred to was in fact Kim Wah Hotel. Further there is nothing on record to show exactly where Kim Wah Hotel is situated.

In the circumstances of this particular case it is evident that there was complete absence of corroboration. There is also nowhere shown that the learned president had at any time directed his mind as to the question of corroboration. The court is unable to say what decision the learned president may have arrived at if he had so directed. As such I am of the opinion that the conviction on the second charge cannot stand.

For the reasons which I have given above, I am allowing this appeal. I therefore quash the conviction and sentence on both charges and substitute an order for acquittal. The fine, if paid, shall be refunded.

*Appeal allowed.*

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## SATHIADAS v. PUBLIC PROSECUTOR

**[A.Cr.J. (Raja Azlan Shah J.) July 31, 1970]**

**[Kuala Lumpur — Criminal Appeal No. 24 of 1970]**

*Penal Code, s. 408 — Criminal breach of trust — Ingredients of offence — Failure of accused to account for monies entrusted to him — Sentence.*

*Evidence — Retracted confession — Admissibility — Evidentiary value of.*

This was an appeal against the conviction of the appellant on three charges of criminal breach of trust. It was alleged that the appellant who was a traffic clerk employed by the Malaysia-Singapore Airways Ltd. received monies from consignees of cargoes but had not made any relevant entries in the sales returns and had not submitted the monies to the Kuala Lumpur head office of the company. At the trial a statement made by the appellant was admitted in evidence. This statement which was a confession was retracted by the appellant in his evidence.

**Held**, dismissing the appeal: (1) the statement made by the appellant was a voluntary one and although it was retracted it was open to the learned president if he held that it was voluntary and true to accept it;

(2) although the mere failure of the appellant to account for the monies entrusted to him on the dates specified in the three charges might not be a foundation for his conviction in all cases but where he was unable to account and render an explanation for his failure an inference of misappropriation with dishonest intent might readily be made;

(3) where the prosecution had proved that the appellant was entrusted with money for a specific purpose and that he has failed to account for it or has done something which is clearly indicative of his dishonest intention, the charge of dishonest misappropriation must be held to have been established unless the appellant shows the existence of some fact or circumstance within his own knowledge which is consistent with his innocence.

Observations in the nature of principles of general application in cases of criminal breach of trust.

*Cases referred to:-*

(1) *Yap Sow Keong and Anor.* v. *Public Prosecutor* [1947] M.L.J. 90.

(2) *Sinaraju* v. *Public Prosecutor* [1961] M.L.J. 33.

MAGISTRATE'S CRIMINAL APPEAL.

*R. Ponnudurai* for the appellant.

*Ajaib Singh* (Senior Federal Counsel) for the respondent.

*Cur. Adv. Vult.*

**Raja Azlan Shah J.:** The appellant was convicted of criminal breach of trust under section 408 of the